Supreme Court, U.S.
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No. 02-493

IN THE

Supreme Court of the United States

SERGIO CARRANZA-HERNANDEZ, *et al.*,
Petitioners,

v.

ARTEMIS S.A., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS AURORA NATIONAL LIFE ASSURANCE COMPANY AND NEW CALIFORNIA LIFE HOLDINGS, INC.

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QUESTION PRESENTED

Whether this Court should grant certiorari over two brief unpublished rulings of a circuit court that interpreted the plain language of a state statute as denying standing on state law claims, and that did not reach any issues of federal law?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petition properly identifies the parties to this proceeding.

Pursuant to Rule 29.6 of the Rules of this Court, Respondents Aurora National Life Assurance Company and New California Life Holdings, Inc. state that Respondent New California Life Holdings, Inc. ("New California") is the holding company of Respondent Aurora National Life Assurance Company. The stock of New California is owned by Aurora S.A. through a voting trust (67%) and SunAmerica Inc. (33%). Neither Aurora S.A. nor SunAmerica Inc. is publicly held. Aurora S.A. is a subsidiary of Artemis S.A., which is not publicly held. SunAmerica Inc. is a subsidiary of American International Group, Inc., which is publicly held.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	6
I. THE NINTH CIRCUIT'S TWO UNPUBLISHED DECISIONS ON STATE LAW ARE NOT REMOTELY WORTHY OF THIS COURT'S REVIEW	7
A. The Ninth Circuit's Conclusions That Petitioners Lack Standing Under State Law Raise No Issue Of Federal Law	7
B. The Ninth Circuit's Conclusions That Petitioners Lack Standing Under State Law Were Demonstrably Correct	9
II. THE REMAINING "QUESTIONS PRESENTED" THAT PETITIONER URGES AS THE SOURCE OF CONFLICTS ARE NOT RAISED BY THIS CASE	11
A. There Was Nothing Conditional About The Ninth Circuit's Conclusion That The District Court Correctly Dismissed *Carranza I* And *II* For A Lack Of Standing As To All Defendants	11
B. The Decisions Below Exercised Pendent Subject Matter Jurisdiction	12
CONCLUSION	13

TABLE OF AUTHORITIES

CASES	Page
Erlich v. *Glasner*, 418 F.2d 226 (9th Cir. 1969)	8
In re Executive Life Ins. Co., 32 Cal. App. 4th 344 (1995)	2
First Nat'l City Bank v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983)	8
Flynn v. *Merrick*, 881 F.2d 446 (7th Cir. 1989)	8
Garris v. *Mitchell*, 46 P.2d 225 (Cal. Ct. App. 1935)	10, 11
Holmes v. *Securities Investor Prot. Corp.*, 503 U.S. 258 (1992)	8
Low v. *Altus Fin. S.A.*, USDC No. 99-CV-02829 (C.D. Cal. filed Feb. 19, 1999)	1, 3
Quackenbush v. *Allstate Ins. Co.*, 121 F.3d 1372 (9th Cir. 1997)	8
Quackenbush v. *Superior Court*, 79 Cal. App. 4th 867 (2000)	9
Smith v. *Martin*, 542 F.2d 688 (6th Cir. 1976)	8

STATUTES	
15 U.S.C. § 1012(b)	8
28 U.S.C. § 1606	8
1935 Cal. Stat. ch. 145	11
Cal. Ins. Code § 1037	1, 9

COURT RULE	
Sup. Ct. R. 10	8

SCHOLARLY AUTHORITY	
13A Charles Alan Wright et al., *Federal Practice and Procedure* (2d ed. 1984)	7

STATEMENT OF THE CASE

Respondents Aurora National Life Assurance Company ("Aurora") and New California Life Holdings, Inc. ("New California") regret the need for even a somewhat lengthy opposition in such a simple case. However, the Petition contains so many factual misstatements and is so convoluted that Respondents believe an accurate statement of the facts and issues would be of benefit to this Court.

Petitioners here were policyholders of an insolvent insurance company, Executive Life Insurance Company ("ELIC"). Petitioners allege that certain Respondents committed wrongs giving rise to state-law claims in acquiring assets from the ELIC estate during its insolvency proceedings. The Commissioner of Insurance for the State of California ("Commissioner"), who continues to serve as the Conservator for the ELIC estate, is suing for these same alleged wrongs. See *Low* v. *Altus Fin. S.A.*, USDC No. 99-CV-02829 (C.D. Cal. filed Feb. 19, 1999) ("*Low*"). The express language of California Insurance Code § 1037 grants the Commissioner standing "exclusively" to bring such claims. This unambiguous state statute does not deny Petitioners appropriate relief. If the Commissioner prevails on his claims, Petitioners will receive a proportionate distribution from the ELIC estate, as will all other ELIC policyholders.

1. ELIC Insolvency and Conservation Proceedings. During the late 1980s and early 1990s, the junk bond market declined precipitously. Due to ELIC's ownership of one of the largest and most default-ridden portfolios of junk bonds of any financial institution in the world, it became massively insolvent, with the value of its liabilities exceeding the value of its assets by several billion dollars. As a result, the Commissioner assumed control of ELIC in April 1991, and placed it into conservation proceedings before the California

Superior Court ("Conservation Court"). Pet. App. 23a. That court named the Commissioner conservator of the ELIC estate.

Beginning in May 1991, the Commissioner conducted a 10 month-long auction of ELIC's junk bond portfolio and the rehabilitation of its insurance business. During that auction, the Commissioner solicited bids, and made a "data room" available such that all bidders had equal access to pertinent information. See *In re Executive Life Ins. Co.*, 32 Cal. App. 4th 344, 361 (1995) ("Care was taken to provide other potential investors with access to the same information that [the winning bidder] possessed"). From the 8 resulting bids, the Commissioner selected the bid of Altus/MAAF, a consortium of foreign insurers and investment firms. Under this bid, Altus would purchase ELIC's junk bonds, while the insurance operations would be rehabilitated by a new junk bond free insurance company called Aurora, a California corporation.[1] This bid also provided that Aurora would infuse $300 million in new capital into the insurance company, and would also provide over $300 million in enhancements to ELIC policyholders who became Aurora policyholders.

In August 1993, the Conservation Court approved the Commissioner's selection of the Altus/MAAF bid, observing that it was the "highest and best bid received." C.A. App. I 176 n.24.[2] In February 1995, the California Court of Appeal also affirmed the approval. Pet. App. 27a. A majority of ELIC policyholders also supported the Commissioner's selection of the Altus/MAAF bid, and with good reason: Through its acceptance, ELIC's policyholders received 92%

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[1] Aurora's shares would be owned by New California, a domestic holding company. The MAAF Group would own New California's shares.

[2] C.A. App. I refers to the Excerpts of Record filed in the Ninth Circuit in *Carranza I*. C.A. App. II refers to the Excerpts of Record filed in the Ninth Circuit in *Carranza II*.

or more of their policy values, whereas most experts had predicted policyholders would receive approximately 75%. C.A. App. I 165.

2. The Commissioner's Suit: Low v. Altus Finance. In February 1999, the Commissioner filed suit against, among others, Altus and the MAAF Group in California Superior Court alleging fraud, conversion and unfair competition with respect to the ELIC rehabilitation. See *Low*, USDC No. 99-CV-02829 (C.D. Cal. filed Feb. 19, 1999).[3] Specifically, the Commissioner alleges that, through a series of secret agreements, Altus – which is owned by Credit Lyonnais, an arm of the French government – was really in control of the shareholdings in New California. The Commissioner maintains that had he known of the alleged relationship and agreements between Altus and the MAAF Group, he would not have selected the Altus/MAAF bid, and seeks damages and restitution on behalf of all ELIC policyholders. Credit Lyonnais, a named defendant in *Low*, removed the Commissioner's suit to Federal District Court pursuant to the removal provisions of the Foreign Sovereign Immunities Act ("FSIA").

3. Carranza I. One month after the Commissioner filed suit in *Low*, Petitioners filed a class action ("*Carranza I*") in California Superior Court on behalf of certain ELIC policyholders in violation of the Conservation Court's prior order requiring its leave to file such a suit. Just like the Commissioner's complaint in *Low*, the *Carranza I* complaint contended that the Altus/MAAF Group's alleged deception enabled them to obtain ELIC assets at a reduced price, derivatively harming ELIC policyholders. Pet. App. 30a. The *Carranza I* plaintiffs' claims were identical in all material respects to the Commissioner's claims in *Low*. *Id.*

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[3] Aurora and New California were not named as defendants in *Low* until the Commissioner filed his Third Amended Complaint in February 2000.

Carranza I was unlike *Low*, however, in that the *Carranza I* plaintiffs sought recovery for themselves as opposed to recovery on behalf of the ELIC estate. *Id.* at 47a.

As it had in *Low*, Credit Lyonnais removed *Carranza I* to Federal District Court pursuant to the FSIA's removal provisions. The District Court dismissed *Carranza I* as to all defendants with prejudice because of lack of standing. The District Court ruled that, as Conservator, the Commissioner is expressly given exclusive standing pursuant to California Insurance Code § 1037(f) to bring all claims "'in connection with the administration, liquidation, or other disposition of the assets'" of ELIC. Pet. App. 22a, 43a-48a. The District Court held that the "plain language" of section 1037(f) applied because "the crux of Plaintiff's complaint is that in the bidding for ELIC's assets Defendants committed various wrongs and frauds that defrauded ELIC," and that *Carranza I* expressly sought restitution of ELIC's assets. *Id.* at 47a. Concluding that this statute meant that "Plaintiff lacks standing to sue any of the Defendants," it dismissed *Carranza I* with prejudice against *"all Defendants . . . for . . . lack of standing."* *Id.* at 22a, 48a[4] (emphasis added).

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[4] Alternatively and independently from its standing ruling, the District Court provided an alternate basis for dismissal in ruling that although removal by Credit Lyonnais was proper under the FSIA, if the plaintiffs had standing, the District Court would have dismissed the pendent party claims against non-sovereign defendants, such as Aurora and New California, in deference to the Conservation Court's prior reservation of exclusive jurisdiction. Pet. App. 31a-43a. Unlike the standing dismissal, which was wholly unconditional, this alternate basis for dismissal was "without prejudice to [Petitioners'] filing his action in the Conservation Court (*if* on appeal or otherwise he establishes, contrary to this Court's conclusion, that he does have standing)." *Id.* at 19a (emphasis added). This alternate basis became moot because, when Petitioners filed *Carranza II*, the Conservation Court subsequently ruled that the federal courts should resolve these cases, including the standing issues. C.A. App. II 1341. The Conservation Court nonetheless stated its opinion that "[t]he Commissioner is the only one to vindicate the rights of

4. Carranza II. Before the *Carranza I* appeal was even heard by the Ninth Circuit, Petitioners filed another action (*Carranza II*) in California Superior Court. Although the claims asserted in *Carranza II* contain cosmetic changes from those dismissed with prejudice for lack of standing by the District Court in *Carranza I*, the crux of the claims (that defendants committed various wrongs and frauds in acquiring ELIC's assets) and relief requested (restitution to certain policyholders) remained the same. Pet. App. 50a-53a. In addition, the *Carranza II* complaint added two former Insurance Commissioners and the State of California as named defendants, as well as a claim labeled under 42 U.S.C. § 1983. Aurora removed *Carranza II* to Federal District Court on the basis of the section 1983 claim.[5]

Once again, the Federal District Court made the determination that the claims asserted in *Carranza II* were "the same as those that the Commissioner is asserting [in *Low*]." Pet. App. 50a. Observing that whether Plaintiffs had standing as to their claims was a question of state law, the Federal District Court concluded the *Carranza II* plaintiffs lacked standing for the same reasons they did in *Carranza I*, *viz.*, because California law unambiguously conferred exclusive standing upon the Commissioner for precisely the types of claims the *Carranza* plaintiffs asserted. *Id.* at 50a-52a. Consequently, it dismissed *Carranza II* with prejudice for lack of standing against all defendants. In its order dismissing the *Carranza II* refiled claims, the District Court noted that it had arranged for an agreement tolling the statute of limitations in the "event that circumstances change, such as a ruling from the Ninth Circuit reversing this Court's previous dismissal of the Carranza [*I*] action or some other unexpected development." *Id.* at 52a.

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policyholders as far as the assets of Executive Life Insurance." *Id.* at 1336.

[5] *Carranza I* did not contain a section 1983 claim, or any other claim arising under federal law.

5. Ninth Circuit Proceedings. Petitioners appealed both the District Court's April 2000 order dismissing *Carranza I* against all defendants for lack of standing, and its December 2000 order dismissing *Carranza II* against all defendants for lack of standing, to the Ninth Circuit. Yet the "unexpected development" of reversal did not materialize in either appeal. Instead, the Ninth Circuit, in two brief unpublished opinions, summarily enforced the plain language of California law in affirming the District Court's unconditional dismissals for lack of standing. Pet. App. 3a (*Carranza I*) ("The district court correctly concluded that the California Insurance Commissioner has exclusive standing under California law to bring the claims asserted in Carranza's action."); see also *id.* at 7a (*Carranza II*) (the District Court correctly dismissed the action "for the same reason that it dismissed the [*Carranza I*] action: the California Insurance Commissioner has exclusive standing to bring the asserted claims."). Contrary to the Petition's contentions, the court of appeals expressed no view on either tolling or on pendent subject matter jurisdiction over non-foreign sovereign defendants under the FSIA.

REASONS FOR DENYING THE PETITION

The questions presented in the Petition are not remotely worthy of this Court's review. The Ninth Circuit's two unpublished opinions address the single issue of whether Petitioners lack standing under *state* law. Moreover, not only was the Ninth Circuit demonstrably correct, but, as is evident by Petitioners' own convoluted statement of the issues (Pet. 3-13), this is an inherently factbound question of no importance to anyone except the parties to the proceedings below. Petitioners present no conflict of federal authority that is relevant to this case; to the contrary, the Ninth Circuit reached no issues of federal law in enforcing the plain meaning of a state statute. The remaining two "questions presented" – tolling and pendent subject matter jurisdiction – are not raised by this case, and represent nothing more than

Petitioners' attempt to torture a federal issue out of the decision below. Indeed, the Ninth Circuit expressed no view on either of those questions; its conclusion regarding standing obviated the need to do so. Thus the "conflicts" Petitioner alleges (*id.* at 23-26) are simply not raised by this case. Neither the tolling issue nor the pendent jurisdiction issue relied on by Petitioners in support of their "circuit split" arguments are remotely relevant to this case, and the Ninth Circuit consequently expressed no view on them.

I. THE NINTH CIRCUIT'S TWO UNPUBLISHED DECISIONS ON STATE LAW ARE NOT REMOTELY WORTHY OF THIS COURT'S REVIEW.

A. The Ninth Circuit's Conclusions That Petitioners Lack Standing Under State Law Raise No Issue Of Federal Law.

In an attempt to torture a federal issue out of the decision below, Petitioners cite numerous authorities concerning Article III standing. Yet the Ninth Circuit affirmed the District Court's correct application of *state*, not federal, law to resolve the question of whether the *Carranza I* and *II* plaintiffs had standing. This is because the lower courts undoubtedly recognized that, as a matter of hornbook law, when a plaintiff raises state law claims in federal court, state law standing requirements apply, in addition to Article III standing requirements. This is true regardless of whether the action was commenced in a federal court or removed to it. See 13A Charles Alan Wright et al., *Federal Practice and Procedure* § 3531.14, at 90-91 (2d ed. 1984) ("[S]tate law of standing should be applied as to state rights [raised in federal courts], whether the state question arises in an original diversity action, *on removal from state court*, or as a matter of ancillary jurisdiction.") (emphasis added; footnote omitted)

(citing cases).[6] Clearly, the Ninth Circuit's enforcement of state standing law is not an "important question of federal law" worthy of this Court's review. Sup. Ct. R. 10.[7]

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[6] The fact that removal of *Carranza I* was based on the FSIA does not change the rule that state law governs standing on state law claims. In *First National City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983), this Court observed the FSIA's language and history clearly establish that the FSIA was not intended "to affect the substantive law determining the liability of a foreign state or instrumentality, or the attribution of liability among instrumentalities of a foreign state." Thus, *First National* held that "where state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances." *Id.* at 622. *See also* 28 U.S.C. § 1606 ("As to any claim for relief with respect to which a foreign state is not entitled to immunity . . . the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances").

[7] Petitioners have not contended (in any court or their Petition) that federal law applies to standing based on their assertion, in *Carranza II*, of a section 1983 claim. Accordingly, any such issue is waived. Even if it were not waived, Petitioners would still lack standing for at least two reasons. First, section 1983 case law is uniform that claims for derivative injuries may not be pursued. *See, e.g., Flynn* v. *Merrick*, 881 F.2d 446, 450 (7th Cir. 1989); *Smith* v. *Martin*, 542 F.2d 688, 689-90 (6th Cir. 1976); *Erlich* v. *Glasner*, 418 F.2d 226, 228 (9th Cir. 1969); *see also Holmes* v. *Securities Investor Prot. Corp.*, 503 U.S. 258, 268-74 (1992) (interpreting RICO to adopt common law rule that only trustee, not creditors, may sue for injury to insolvent estate). Second, the McCarron-Ferguson Act, 15 U.S.C. § 1012(b), requires that section 1983 not be interpreted to conflict with or displace Cal. Ins. Code § 1037(f). *See, e.g., Quackenbush* v. *Allstate Ins. Co.*, 121 F.3d 1372, 1381 (9th Cir. 1997) ("there is no question that California's insurer-insolvency provisions regulate the 'business of insurance' and are saved from preemption by the McCarran-Ferguson Act"). In all events, any standing issue concerning the section 1983 claim (if it were not waived) would be factbound and not involve any conflict.

B. The Ninth Circuit's Conclusions That Petitioners Lack Standing Under State Law Were Demonstrably Correct.

Petitioners have no basis for quarrelling with the Ninth Circuit's factbound determination that they lacked standing under state law. California law is unambiguous as to the question of who has standing to assert precisely the types of claims plaintiffs asserted in *Carranza I* and *II*. Specifically, California Insurance Code § 1037(f) provides that the Commissioner "exclusively" has standing to pursue claims "in connection with the administration, liquidation, or other disposition of the assets" of ELIC.[8] Indeed, the California Court of Appeal recently held that section 1037(f) gives the "sole and exclusive authority" to sue to the Commissioner. *Quackenbush* v. *Superior Court*, 79 Cal. App. 4th 867, 874 (2000). The plain language of this provision compels the conclusion that the Commissioner and the Commissioner alone has standing to pursue claims arising out of ELIC's rehabilitation. Certainly where, as here, the Commissioner has in fact exercised his section 1037(f) authority by bringing the *Low* action, his authority is exclusive.

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[8] Section 1037(f) provides:

> Upon taking possession of the property and business of any person in any proceeding under this article, the commissioner, exclusively and except as otherwise expressly provided by this article, either as conservator or liquidator:
>
> . . . .
>
> . . . may, for the purpose of executing and performing any of the powers and authority conferred upon the commissioner under this article, in the name of the person affected by the proceeding [ELIC] or in the commissioner's own name, prosecute and defend any and all suits and other legal proceedings . . . in connection with the administration, liquidation, or other disposition of the assets of the person affected by that proceeding.

Accordingly, the Commissioner, who has continued to be ELIC's Conservator, "exclusively" has standing to bring claims relating to the "disposition" of ELIC assets during the conservation "proceeding."

The Ninth Circuit ruling also enforces the public policy underlying section 1037(f). First, any other rule would open the floodgates to litigation of multiple claims by policyholders even after approval of a rehabilitation plan, thereby creating the possibility of inconsistent judgments. This would undermine the finality necessary for California's statutory scheme governing insurance insolvency proceedings to function. Second, the Commissioner's exclusive standing is necessary to ensure the equitable treatment of all policyholders. Without it, a race to the courthouse by individual policyholders – such as those in *Carranza I* and *II* – would ensue and compromise the uniform and equitable distribution of the insolvent insurer's assets. Finally, in passing section 1037(f), the California legislature answered the question of whether an insolvent insurer's estate and policyholders need multiple sets of attorneys pursuing multiple claims with a resounding "no". Any other rule would multiply the number of lawyers claiming a share of any recovery on behalf of the estate and policyholders.

Carranza I and *II* asserted precisely the type of claims section 1037(f) reserves for the Commissioner. As the lower court correctly observed, "the crux of Plaintiff's complaint is that in the bidding for ELIC's assets Defendants committed various wrongs and frauds that defrauded ELIC." Pet. App. 47a. There can be no question that these claims involve "the administration, liquidation, or other disposition" of ELIC's assets. The Ninth Circuit thus properly concluded that Petitioners lacked standing because the claims asserted in *Carranza I* and *II* were identical in all material respects to the claims reserved for, and asserted by, the Commissioner himself.

Nor did the Ninth Circuit err in affirming the District Court's rejection of the *Carranza I* and *II* plaintiffs' assertions they fit within an exception to section 1037(f). Relying on *Garris* v. *Mitchell*, 46 P.2d 225 (Cal. Ct. App. 1935), Petitioners urged below that they had standing under

California insurance law to bring a direct action for breach of trust and fraud related to ELIC's rehabilitation proceedings. As the District Court correctly observed, however, *Garris* involved (among other things) a situation where a Commissioner had refused to correct clearly improper preferences. Pet. App. 51a. This is in stark contrast to the instant case where the Commissioner has filed the *Low* action against numerous private defendants and is pursuing the very claims urged by Petitioners for the benefit of all ELIC policyholders.[9]

In sum, the Ninth Circuit did no more than affirm a correctly-applied rule of state law that clearly compelled the result that Petitioners lacked standing. This does not remotely warrant review by this Court.

II. THE REMAINING "QUESTIONS PRESENTED" THAT PETITIONER URGES AS THE SOURCE OF CONFLICTS ARE NOT RAISED BY THIS CASE.

A. There Was Nothing Conditional About The Ninth Circuit's Conclusion That The District Court Correctly Dismissed *Carranza I* And *II* For A Lack Of Standing As To All Defendants.

In its second "question presented," Petitioners argue that the decision below requires this Court's intervention to correct a split in the Circuits regarding the doctrine of tolling. Pet. 23. Petitioners thus implausibly insist that the Ninth Circuit created a conflict by establishing a new tolling doctrine of "'wait and see standing.'" *Id.* at 14 (emphasis

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[9] Moreover, *Garris* was decided before section 1037(f) became effective and consequently did not address section 1037(f). *See Garris*, 46 P. 2d at 226; 1935 Cal. Stat. ch. 145. In all events, *Garris* set forth the prior court-made rule that the Conservator (the Commissioner in this case) "is the person to sue to collect the assets of the estate, and that the creditors under ordinary circumstances have no right to maintain such an action." *Garris*, 46 P. 2d at 227.

omitted). This is a blatant distortion of the ruling below. The Ninth Circuit did not hold, implicitly or explicitly, that Petitioners' claims were conditionally dismissed or could be refiled. To the contrary, the Ninth Circuit held simply that the plaintiffs lacked standing. A review of the appellate court's two short memorandum dispositions reveal no mention of "tolling" or of anything about the dismissal being conditioned on a future occurrence.

Petitioners' argument simply stems from a misreading of the District Court's opinion. In context, it is clear that although the District Court dismissed *Carranza II* based on a lack of standing, it also believed there was an alternative, *independent* basis for dismissal – *i.e.*, plaintiffs' failure to obtain leave to sue from the Conservation Court as required by a prior order of the Conservation Court. See Pet. App. 50a, 52a. By arranging for tolling agreements, the District Court simply provided for the possibility that the Ninth Circuit might disagree with it on standing and, *if that circumstance occurred,* tolled the time for plaintiffs to cure their independent failure to obtain leave from the Conservation Court to sue. The dismissal based on standing, however, was entirely unconditional, as was the Ninth Circuit's disposition affirming that order. The appellate court was silent as to tolling for good reason: Its conclusion that Petitioners' claims were properly dismissed with prejudice for a lack of standing obviated any reason to consider any tolling issues. Thus, the Petition raises no genuine tolling issue.

B. The Decisions Below Exercised Pendent Subject Matter Jurisdiction.

In its third "question presented," Petitioners make the unbelievable assertion that the decision below directly conflicts with "Ninth Circuit and the majority [of] authority from other circuits on the issue of mandatory pendent jurisdiction under the Foreign Sovereign Immunities Act where the foreign sovereign remains a party to the action." Pet. 14. Petitioners therefore ask this Court to order the lower

courts to exercise pendent subject matter jurisdiction over the non-foreign sovereign defendants. The issues of standing and pendent subject matter jurisdiction, however, are very different. The lower courts already have exercised pendent subject matter jurisdiction. When the Ninth Circuit affirmed the District Court's orders dismissing *Carranza I* and *II* for lack of *standing as to "all Defendants,"* including domestic defendants Aurora and New California, Pet. App. 22a, 48a, 50-51a (emphasis added), it in fact approved the District Court's exercise of pendent subject-matter jurisdiction to apply its standing dismissal to the non-foreign sovereign defendants in these actions.

* * * *

This case raises no federal issue whatsoever, and the purported conflicts of authority that Petitioners drum up are nonexistent. Moreover, the Ninth Circuit's holdings that Petitioners lack standing as a matter of state law are plainly correct, and no error even conceivably warrants this Court's intervention.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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